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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RICHARD HANCOCKS,

Plaintiff and Appellant,

v.

COUNTY OF ALAMEDA,

Defendant and Respondent;

MERCY HOUSING CALIFORNIA,

Real Party in Interest and
Respondent.

A145329

(Alameda County
Super. Ct. No. HG14740709)

Richard Hancocks appeals a judgment entered after the trial court denied his petition for writ of mandate challenging the County of Alameda's (County) approval of a conditional use permit (CUP) for a housing project proposed by Mercy Housing California (Mercy). He contends the approval was inconsistent with the County's general plan and the applicable specific plan because it included only residential uses. He also challenges the adequacy of the County's findings. We shall affirm the judgment.

I. BACKGROUND

A. The Project

Mercy applied for a CUP to allow construction of the San Lorenzo Senior Housing project (the Project), an affordable senior housing development at 15888 Hesperian Boulevard on 1.37 acres in unincorporated San Lorenzo. Mercy seeks to demolish an

existing vacant building that previously housed a post office and construct 77 units of senior housing, with common space and amenity areas, a separate garden pavilion structure to be used as an exercise room or common area, parking lots, an orchard, and landscaping. The Project includes raised sidewalks connecting the building to Hesperian Boulevard and marked pathways to a nearby grocery store.

The Project site is immediately adjacent to the San Lorenzo library and sits behind and beside a local retail center, which fronts on Hesperian Boulevard, and includes the grocery store, a restaurant, a post office, and other shops and services. The San Lorenzo Village Homes Association, which hosts a number of senior services, is next to the library, within walking distance of the Project.

B. The General and Specific Plans

The Project site lies within the purview of two plans: the Eden Area General Plan, adopted on March 30, 2010 (the General Plan) and the San Lorenzo Village Center Specific Plan, adopted on October 7, 2004 (the Specific Plan).

The General Plan includes various land use designations, which “indicate the intended future use of each parcel of land within the Eden Area.” Among these designations is the “San Lorenzo Village Specific Plan Area (SLZVSPA).” The General Plan explains: *“This designation is designed to implement the vision, uses and intensities in the San Lorenzo Village Center Specific Plan, which was adopted by Alameda County in 2004. . . . The designation covers approximately 30 acres and envisions the area as an active center with stores, public facilities, cultural uses, outdoor spaces and attractive streetscape environment with new multi-family, mixed-use development. . . . [T]he maximum amount of cumulative development allowed in the San Lorenzo Village area is 580 housing units with an average density of 19.5 dwelling units per acre and a maximum of 230,000 square feet of commercial and public uses. Specific land use, urban design, dimensional standards and other policies and standards are identified in the Specific Plan. The Specific Plan must be followed as the controlling document for the San Lorenzo Village area as defined in that document.”* (Italics added.)

In the section entitled “Goals, Policies, and Actions,” the General Plan includes the San Lorenzo Village Center as one of several “Districts,” which are “intended to be pedestrian- and transit-oriented centers of mixed[-]use development,” and which are intended for redevelopment. In those districts, “[t]he County should strategically pursue commercial and vertically-mixed[-]use development (i.e.[,] residential uses over commercial uses).”

The Specific Plan describes an overall vision for the SLZVSPA to “become the economic, commercial and cultural heart of San Lorenzo. It can again be an active center consisting of stores, public facilities, and outdoor spaces,” with “[a] diversity of small and large shops and retail services in an attractive landscaped setting.” The plan’s “Overarching Land Use Principle” is to “[e]stablish a balanced mix of diverse uses including a range of small- to large-retail stores and services, civic, institutional and residential uses. Encourage mixed retail/residential uses throughout the plan area.” Among the land use goals is: “In order to support a lively and desirable public environment, encourage development having residential uses above ground floor retail, office or civic uses throughout the plan area.”

The Specific Plan sets forth the land uses that are permitted, those that are not permitted, and those that require a CUP. Residential uses that are part of a project that includes commercial development are permitted. “Other residential” uses require a CUP, meaning they are subject to a public hearing before the Planning Commission (the Commission) at which the use may be approved as proposed, approved subject to conditions, or denied outright. There are no residential uses listed among those not permitted.

C. Project Approval

Because the Project involved only residential uses, it was subject to the Specific Plan’s requirement of a CUP. Planning Department staff reports concluded that the Project was consistent with the General and Specific Plans. The report for a May 27, 2014 Commission hearing concluded: “The project conforms to the overall vision [of the Specific Plan] in that it fits in between the San Lorenzo library and the Lucky’s grocery

store, thus providing the potential for these residents/consumers to participate in the economic and civic community. The integration of this project may ignite more demand for commercial amenities and trigger the addition of more retail stores and services. . . . The project promotes the ideal of interconnectedness by emphasizing pedestrian travel ways out of the project into adjacent land uses such as the nearby grocery store, public library and the greater village center.” The report went on: “The proposed project is set back 250 feet from the closest street (Hesperian Blvd) and many of the urban design guidelines related to commercial development do not apply to this project. The focus of the Specific Plan on a strong street frontage with zero setbacks, wide sidewalks, retail frontage and appropriate signage are related to retail/commercial development possibly with office or residential above. Staff believes these design elements should be part of any project that has frontage on a major or interior street, but in this case (because of the location of the project 250 feet away from the active frontage[]) many of the plan design guidelines are not applicable.” The staff report concluded that “the location of this proposed residential development surrounded by civic and commercial uses will effectively operate as a mixed[-]use project even though a commercial component is not integrated into the proposed structure.”

The Commission approved the CUP application. In its resolution, the Commission found (1) the use was required by the public need; (2) it would be properly related to other land uses and transportation and service facilities in the vicinity; (3) the use would not adversely affect the health and safety of people residing nearby or be detrimental to the public welfare; and (4) the use would not be contrary to “the specific intent clauses or performance standards” of Subarea 2 of the San Lorenzo Specific Plan. In connection with the fourth finding, the resolution stated, “The plan emphasizes active street level uses and a strongly defined edge with buildings situated to front onto streets to create the village atmosphere described in the plan. The current project is set back more than 250 feet from Hesperian Blvd and lacks street frontage, and as such many of the design guidelines for siting of buildings do not apply. Within Subareas 2, 4 and 5A–5D most of the available sites have frontage on a major or interior street, and this project

site is unique in that it is placed away from any street and is likely one of the only, if not the only, site where a residential project that does not include a commercial component could be considered a conditional use. This project site is uniquely appropriate for the proposed land use due to the adjacencies to the existing grocery store and community uses. . . . The Plan anticipates a residential-only project could be built, with approval of a Conditional Use Permit and the adoption of the findings contained herein.” The Commission found the project consistent with the goals, vision, and stated intent of the Specific Plan.

Hancocks appealed this decision to the Alameda County Board of Supervisors (the Board) on the ground that the residential-only project was inconsistent with both the General Plan and the Specific Plan. The staff memorandum to the Board recommended the appeal be denied and the project approved. The memorandum stated that the project “conforms to the overall vision [of the Specific Plan]” because of its proximity to the library, the retail center, and the senior activities, and that the Project, “surrounded by civic and commercial uses, will effectively operate as a mixed-use project even though a commercial component is not integrated into the proposed structure.” At the hearing, the secretary of the Commission testified that the Specific Plan included a provision for “other residential uses,” and that a project like this could be approved with a CUP. The Board denied the appeal and upheld the Commission’s approval of the Project.

Hancocks petitioned the trial court for a writ of administrative mandate. (Code Civ. Proc., § 1094.5.) The trial court denied the petition, concluding the Board did not abuse its discretion in interpreting the General Plan and Specific Plan to allow approval of the CUP; that the Board’s resolution was supported by findings of fact and the findings were supported by substantial evidence; and that the Board’s resolution was supported by the findings required by Alameda County Zoning Ordinance.

II. DISCUSSION

A. Legal Standards

Hancocks contends the trial court erred in concluding that (1) the Board did not abuse its discretion in interpreting the General Plan and the Specific Plan to allow approval of the CUP, (2) the Board made the required findings, and (3) the findings were supported by substantial evidence. Our task on appeal of a mandate proceeding “is essentially identical to that of the trial court. [Citation.] Accordingly, ‘we review the agency’s actions directly and are not bound by the trial court’s conclusions. [Citations.]’ [Citation.]” (*Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 939.)

Under California’s Planning and Zoning Law (Gov. Code,¹ § 65000 et seq.), each county must adopt a general plan, which serves as the “charter for future development.” (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; § 65300.) The county may then “prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan.” (§ 65450.) The specific plan must be consistent with the general plan. (§ 65454; *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 355.)

“ ‘[A] governing body’s conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion.’ [Citations.] ‘An abuse of discretion is established only if the [governing body] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. (Code Civ. Proc., § 1094.5, subd. (b).) We may neither substitute our view for that of the [governing body], nor reweigh conflicting evidence presented to that body. [Citation.]’ [Citation.] This review is highly deferential to the local agency, ‘recognizing that “the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory

¹ All undesignated statutory references are to the Government Code.

capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the [governing body] officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" [Citation.]" [Citation.]" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.) "[A] finding of consistency requires only that the proposed project be 'compatible with the objectives, policies, general land uses, and programs specified in' the applicable plan. [Citation.] The courts have interpreted this provision as requiring that a project be 'in agreement or harmony with' 'the terms of the applicable plan, not in rigid conformity with every detail thereof. [Citations.]" (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678.) The same deference is given to agencies' interpretation of their specific plans. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509.) "It is, emphatically, *not* the role of the courts to micromanage these development decisions." (*Sequoia Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.)

B. Consistency with General and Specific Plans

Hancocks's primary contention is that the Project is not consistent with the General Plan. He contends that within "districts," the General Plan allows residential uses only within mixed-use developments. We are unpersuaded. The General Plan provides that districts are "intended to be pedestrian- and transit-oriented centers of mixed[-]use development," and that the County should "strategically pursue commercial and vertically-mixed development (i.e., residential uses over commercial uses)." While these policies encourage mixed-use developments, they do not prohibit individual projects that are limited to residential use in appropriate circumstances.

Moreover, the 2010 General Plan specifically provides that "[t]he [2004] Specific Plan must be followed as the controlling document for the San Lorenzo Village area." And, as we have explained, while the Specific Plan "[e]ncourage[s] mixed

residential/retail uses,” it does not prohibit solely residential projects. Rather, under the Specific Plan, residential uses that are part of a project that includes commercial uses are permitted, and other residential uses require a CUP. In context, the term “[o]ther residential uses” clearly encompasses projects that do not include a commercial component. We therefore reject the contention that a solely residential project is fatally inconsistent with the General and Specific Plans.

There is ample evidence in the record to support the conclusion that the Project was in fact consistent with the applicable plans. The Project site was set back too far from Hesperian Boulevard to be appropriate for the commercial or mixed-use development encouraged by the General and Specific Plans. The housing was close to commercial and civic amenities and included walking paths leading to the nearby stores and other services. According to staff, the Project would “effectively operate as a mixed-use project even though a commercial component is not integrated into the proposed structure.” It was also noted that this location was “uniquely appropriate for the proposed land use” because of its proximity to existing retail and community uses. On this record, it was entirely reasonable for the Board to find the Project was compatible with the General and Specific Plans.

C. Challenges to Findings

1. General Findings

Hancocks next contends the Board’s decision was not supported by the required findings.

When an agency makes an adjudicatory decision subject to review under Code of Civil Procedure section 1094.5, it must set forth findings to enable the parties to determine whether they should seek review and to apprise a reviewing court of the basis for the agency’s action. A reviewing court must determine whether substantial evidence supports the findings and whether the findings support the agency’s decision. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514 (*Topanga Assn.*)). In making these determinations, the review court resolves reasonable doubts in favor of the agency’s findings and decision. (*Id.* at p. 514.)

The Board's resolution denying Hancocks's appeal recited that the Commission had approved the CUP through its Resolution No. 14-04; that Hancocks had appealed the Commission's decision on the ground that the residential-only Project was inconsistent with both the Specific and General Plans; that the Commission had heard presentations from its staff and was presented with the Specific Plan language upon which Hancocks relied; that the General Plan stated that the Specific Plan must be followed as the controlling documents for the San Lorenzo Village Area; that the Specific Plan stated that the overarching land use principle was to establish a balanced mix of diverse uses and encouraged mixed retail/residential uses; that the Specific Plan provided that other residential uses could be permitted with a CUP; and that residential-only projects were not included on the list of "Not Permitted Uses." The Board found that these recitals were "true and correct and have served, together with the supporting Documents, as the basis for the findings and approvals set forth below." The resolution then stated the Board "denies the appeal submitted by Mr. Hancocks and upholds that the [Commission] approval of May 27th, 2014 was not in error [and] that the San Lorenzo Village Area Specific Plan does provide for a residential-only project through the conditional use permit process," and approved the CUP for the Project. It is clear from the record that the Board had before it, in addition to its own staff report, the Commission's resolution.

Hancocks contends these findings do not explain adequately how the Board reached its decision. Not so. The Board resolution explains the reasons that a residential-only project may be permissible under the General and Specific Plans. It refers to the evidence before the Board and the presentations to the Commission. Moreover, "[b]y affirming the Commission's decision, the [Board] in effect adopted its findings." (*Ross v. City of Rolling Hills Estates* (1987) 192 Cal.App.3d 370, 376 (*Ross*), citing *Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817, 823.) Those Commission findings include a detailed explanation of the reasons the CUP was appropriate in these circumstances. The Board's resolution is sufficient to alert the parties to the basis for any legal challenge and to allow the courts to conduct meaningful

judicial review. (*Topanga Assn., supra*, 11 Cal.3d at pp. 513-514.) And, as we have already explained, substantial evidence supports the findings.

Relying on *Respers v. University of Cal. Retirement System* (1985) 171 Cal.App.3d 864, Hancocks argues we may not look to the Commission's resolution to support the Board's findings. *Respers* is inapposite. There, the board of the University of California's retirement system *rejected* the findings of its hearing officer but failed to make findings supporting its rejection of the proposed decision. (*Id.* at pp. 867, 869.) The Court of Appeal concluded the record did not show the retirement system board had adopted as its own the findings a review committee had made a year before the hearing officer's proposed decision. (*Id.* at pp. 869, 872.) In doing so, it stated: "Absent some indication an agency has adopted the findings of others, there is no assurance that findings prepared by others reflect the views of the agency taking the action." (*Id.* at p. 872.) The court also noted that the hearing officer had heard "significant new testimony" at the administrative hearing that took place after the review committee had made its findings. (*Id.* at pp. 869, 873.) Here, on the other hand, the Board referred to the Commission's resolution, upheld the Commission's decision, made findings explaining the basis for its conclusion that a residential-only project was permissible under the applicable plans, and explicitly referred to the proceedings before the Commission and to the Commission's adoption of the CUP and approval of the Project. Hancocks suggests his letter to the Board stating as a ground for his appeal that the Project was inconsistent with the General Plan as well as the Specific Plan constituted new evidence before the Board. This legal argument is not the sort of new evidence at issue in *Respers*. In any case, the Board's resolution sets forth the basis for its rejection of this argument.

2. Ordinance Code Findings

Finally, Hancocks contends the Board failed to make the findings required by Alameda County's Ordinance Code. Section 17.54.130 of that code provides that "conditional uses" require review and appraisal of whether the use: "A. Is required by the public need; [¶] B. Will be properly related to other land uses and transportation and

service facilities in the vicinity; [¶] C. If permitted, will under all the circumstances and conditions of the particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; and [¶] D. Will be contrary to the specific intent clauses or performance standards established for the district, in which it is to be located.”

The Commission made findings as to each of these topics specific to this ordinance. The Board’s resolution did not repeat those findings. Hancocks contends the Board’s findings were therefore deficient. We reject this contention. As we have explained, the Board referred to, and in effect adopted, the Commission’s findings when it affirmed the Commission’s resolution. (See *Ross, supra*, 192 Cal.App.3d at p. 376.)

III. DISPOSITION

The judgment is affirmed.

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.